

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MICHAEL MCKENZIE, individually and
doing business as AMERICAN IMAGE ART,
an unincorporated dba,

Plaintiff,

v.

ARTISTS RIGHTS SOCIETY, INC., and
JANET HICKS,

Defendants.

Case No. 22-cv-01619-MKV

**DECLARATION OF JANET HICKS
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR DEFAULT**

JANET HICKS declares as follows:

1. I am the Vice President, Director of Licensing for defendant Artists Rights Society, Inc. ("ARS") and am a named defendant in this lawsuit. I submit this affidavit in opposition to plaintiff Michael McKenzie's ("Plaintiff") motion for default against me and ARS (collectively, "Defendants").

2. The information in this declaration is based on my personal knowledge, and if called to testify I would testify to the facts contained in this declaration.

3. I am over the age of eighteen and am otherwise competent to make this declaration.

4. The sworn affidavits of service filed by the Plaintiff in this matter (Dkt. Nos. 10 & 11) both state that the complaint was served personally on me on May 24, 2022, in my individual capacity and as one authorized to receive service for ARS. This is false.

5. On May 24, 2022, not only was I out of the office, but I was also out of the country. I was traveling abroad in Norway at a conference in Oslo, and if requested, would provide documentary proof of this fact. Accordingly, the process server could not have personally served the complaint on me (let alone twice).

6. Indeed, I spoke with our receptionist, Robert Dunkin, who was present on May 24, 2022, and he said someone came to the office who said he “had something” for me, and simply handed it to Mr. Dunkin. The person did not ask for a description of me and did not give any further details about the delivery.

7. Our receptionist is not authorized to accept service of legal documents.

8. Curiously, both affidavits of service include a physical description of me (a blond woman) even though the process server could not possibly have seen me in person and would only have seen Mr. Dunkin (a brunette man). For the Court’s information, the Plaintiff has personally seen me before when I was deposed in connection with his litigation against Morgan Art Foundation and so would already know what I look like.

9. The affidavits both also indicate that I was asked about whether I serve in the military; this is also false given that no process server ever spoke to me.

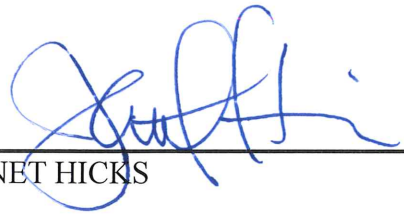
10. I did not discover the supposedly served copy of the complaint until well after my return from Europe, particularly given that I am not regularly in the office. Like many at ARS, I work a hybrid schedule due to the COVID-19 pandemic and am not regularly at my desk.

11. Moreover, there have been recent staffing changes in ARS’s legal department, further contributing to the unfortunate delay in our discovering that the Plaintiff had attempted to serve this complaint.

12. The court should deny Plaintiff’s request to hold the Defendants in default given Plaintiff’s failure to properly serve the complaint, Defendants’ justifiable reason for not realizing that service had been attempted, and because of Plaintiff’s (and their process server’s) apparently dishonest tactics in doing so.

13. I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 28, 2022
New York, New York



JANET HICKS